IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 185 of 2000()

AGAINST THE ORDER DT.29.8.98 IN CC.94/1997 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM.

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APPELLANT: COMPLAINANT

T.S.PRAMOOD,
THADATHIL HOUSE,
NATTAKAM, KOTTAYAM.

BY ADV. SRI.K.G.PAVITHRAN

RESPONDENTS: ACCUSED

V.K.MOHAMMED SHEREEF,
KASHAKKAKARA, PAKKIL P.O.,
KOTTAYAM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 185 of 2000

Dated this the 21st day of February, 2007

Judgment

This appeal is filed by the complainant against acquittal of the accused under section 256 of the Code of Criminal Procedure. The complaint was filed alleging dishonour of cheque given by the respondent for insufficiency of funds. The respondent/accused did not appear before the court even though the court granted several times for the appearance of the accused. The complainant/appellant was present in court on all those days. But, due to a wrong noting of the posting date of the case, the complainant and his counsel were not present in court on 29.8.1998 and on that day, the court below acquitted the accused under section 256 (1) of the Code of Criminal Procedure. The impugned order is a stereo-typed order without application of mind. Even though accused can be acquitted under section 256 Cr.P.C. for the absence of the complainant, it should not be done mechanically. On the facts and circumstances of the case, the impugned ord4er is set aside and the matter is remanded. Since accused was absent, presence of the complainant was not necessary.

The complainant shall appear before the trial court on 26.3.2007. Notice sent by this court was evaded by the respondent. Fresh steps should be taken against the respondent/accused.

Appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No. 187 of 2000

Judgment

21-2-2007